

No. 9 (1) 82-6 Lab/5734.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Clutch Auto Pvt. Ltd., Plot No. 111/112, Sector 6, Faridabad :—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 247/81.

between

INDERPAL SINGH WORKMAN AND THE MANAGEMENT OF M/S CLUTCH AUTO,
PRIVATE LIMITED, PLOT NO. 111/112, SECTOR-6, FARIDABAD

Present:—

Shri Bhim Singh Yadav, for the workman.

Shri K.P. Agrawal, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Inderpal Singh and the management of M/s Clutch Auto Private Limited, Plot No. 111/112, Sector-6, Faridabad, by order No. ID/FD/78/81/35835, dated 30th July, 1981, to this Tribunal, for adjudication in exercise of power conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of service of Shri Inderpal Singh was justified and in order ? If so, what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleading the following issues were framed by my order, dated 5th October, 1981 :—

- (1) Whether the domestic enquiry is fair and proper ?
- (2) Whether the workman is gainfully employed ? If so, to what effect ?
- (3) Whether the termination of service of Shri Inderpal was justified and in order ? If so, what relief is he entitled ?

The management examined Shri K. P. Agrawal, Enquiry Officer as MW-1 and Shri B. R. Yadav, Personnel Manager as MW-2. The workman examined himself as his own witness.

ISSUES NO. 1:

MW-1 deposed that he was appointed Enquiry Officer,—vide Exhibit M-1. He had conducted domestic enquiry from 12th September, 1980 to 9th March, 1981 by following of principles of natural justice. Copy of proceeding was Exhibit M-2. The representative of the workman was allowed to cross examine the management witnesses and also lead defence. The workman had made statement that he did not want to produce any other defence. Documents produced during the enquiry were Exhibit M-1 to M-11. The enquiry report was Exhibit M-3. The Factory Manager had consulted Deputy Labour Commissioner, Faridabad,—vide Exhibit M-4 prior to dismissal. The reply of the Deputy Labour Commissioner was Exhibit M-4. Final order was passed by the company, copy of which was Exhibit M-6. Copy of Standing Order was Exhibit M-7-A. In cross-examination, he replied that Shri O.B. Mathur had conducted some enquiries prior to Exhibit M-1, but he could not say what enquiry he had held. The management examined four witnesses. He replied that he had asked the representative of the management to produce Blanking Die and Inspection Report. On the given date, the representative of the management told that the same were not available. This fact was given in the proceeding. The workman had requested for additional evidence which was allowed by him and the workman availed the opportunity. He denied the suggestion that he had given finding as per directions of the management. The concerned workman deposed that he was working as Die Fitter from 13th August, 1975. He received charge-sheet Exhibit M-7 and gave his reply,—vide Exhibit M-3. He had received notice Exhibit W-1 and participated in the enquiry. The management had displayed a notice for his dismissal on the gate on 14th May, 1980. Notice was Exhibit M-8. After it, the enquiry was also conducted by Shri K.P. Agrawal. He had asked for production record and Die Inspection Report but the same was not supplied to him. He participated in the

enquiry along with his representative throughout. In cross-examination, he replied that on the enquiry report Exhibit M-2, he had signed alongwith his representative but the enquiry proceedings were not recorded correctly. He admitted that it is correct that he used to receive the copies of proceedings simultaneously. He had sent complaint by post, copy of which was Exhibit WW-2/1 and its postal receipt was Exhibit WW-2/2. This complaint was made about the proceeding of 26th February, 1981. He had produced his witnesses in the enquiry. He also admitted that he had made a statement that he does not want to produce any other evidence. He admitted that the union had taken a decision before Deputy Labour Commissioner that a fresh enquiry was to be held in his case and it was also decided that Deputy Labour Commissioner will be consulted before the final decision. He had not signed the settlement. He was not aware that the Deputy Labour Commissioner was consulted before the final dismissal order. The Enquiry Officer had acceded to his request for facility on the first hearing. It was also admitted that he had allowed additional evidence.

I have gone through the enquiry file and find that the Enquiry Officer held his sittings from 12th September, 1980 to 9th March, 1981 on different dates. The workman participated in the enquiry along with his representative. He signed the proceedings, cross-examined the management's witnesses and led his defence. He was also allowed opportunity to lead additional evidence in the domestic enquiry. The workman had admitted the facts in his deposition. The management examined four witnesses in support of allegation and placed on record relevant documents which were Exhibit M-1 to M-11. In defence, the workman examined himself and one Shri S. K. Bhatia. The main allegation of the workman was that the inspection report was not produced by the management. The workman had stated in the enquiry that there was a slight bur found at the time of inspection. This fact is also admitted by Shri S. K. Bhatia, Inspector who was examined in defence by the concerned workman. The version of the management is also the same. Shri S. K. Bhatia has stated that in the inspection report, fact about bur was also mentioned. He had further stated that Shri M. L. Sharma had asked that he wanted die according to the drawing. It goes to show that die was not completely according to the drawing given for modification to the concerned workman. I do not think if the inspection report could have helped the workman he himself admits this fact along with his other defence witness. As regards that allegation he had sent a complaint, copy Exhibit WW-2/1 or WW-2/2 to the enquiry officer about recording of the statements. I find from the enquiry that his request was taken down by the Enquiry Officer in the proceeding, dated 26th February, 1981, which was also signed by the concerned workman. The enquiry officer had, on the request of the workman, adjourned the enquiry to 2nd March, 1981 and his statements were recorded on that day. He also cross-examined and statements of his defence witnesses were also recorded on this adjourned date. The enquiry officer has based his finding on the evidence recorded by him and proved the charge of using insolent language against his superior. I have also gone through the evidence recorded by him. I find that the enquiry officer had followed the principle of natural justice in conducting of enquiry and his report is based on material placed on record besides evidence led by the parties in the domestic enquiry. Therefore, this issue is decided in favour of the management.

ISSUE NO. 3:

I take up issue No. 3 first because this issue being as per reference.

MW-1 stated that he submitted his enquiry report to the management. The Factory Manager had sent a letter copy Exhibit M-4 to the Deputy Labour Commissioner which was replied by letter Exhibit M-5. The final order was passed by the Managing Director of the Company, copy of which was Exhibit M-6. MW-2 in his testimony stated that Exhibit M-7 chargesheet was issued to the workman. Enquiry report Exhibit M-3 was received by the management Letter Exhibit M-4 was sent to the Deputy Labour Commissioner in reply of which letter Exhibit M-5 was received after which Exhibit M-6 dismissal order was issued. It was signed by Shri Mehta, Managing Director. Copy of standing order was Exhibit M-7-A. In cross-examination, he stated that Shri O.P. Mathur was first appointed enquiry officer but could not say if he had started the domestic enquiry. He admitted that Exhibit W-1 was issued by the company. He did not know signature on the back of it. It was within his knowledge that Shri O. P. Mathur, Enquiry Officer was changed on the complaint of the workman. The complaint was Exhibit W-2. He denied the suggestion that the workman had accepted Shri Mathur after letter Exhibit W-2. He also admitted that the management had terminated the services of the workman but later on according to the settlement under section 12(3), a fresh enquiry was ordered. He could not say if the settlement held the signature of the workman. The concerned workman stated that a notice about his dismissal was displayed at the factory gate. I find from the record that second enquiry was conducted as per settlement arrived on the intervention of Deputy Labour Commissioner which was evident from Exhibits M-4 and M-5. The workman was found guilty by the Enquiry Officer. The charges being not following the directions of his superiors in performing given job at an early date and secondly misbehaviour by using

insolent language, punishment for which was provided under clause 20 (24) and 20(27) of the Certified Standing Orders, copy Exhibit 11-7-A. I find no ground to interfere in the decision taken by the management.

ISSUE No. 2:

I have decided issue under reference in favour of the management, therefore, I do not find any necessary to decide this issue.

While answering the reference, I give my award that the workman was not entitled to any relief.

Dated, the 27th May, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 554 dated the 31st May, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 29th December, 1981

No. 9(1)81-6Lab./14938.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Bermacco Fabricators (Valves Division) Plot No. 78, Sector 6, Faridabad :—

**IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, ROHTAK**

Reference No. 441 of 1980

between

**SHRI P. V. PADMANABHAN, WORKMAN AND THE MANAGEMENT OF
M/S BERMACO FABRICATORS (VALVES DIVISION) PLOT
NO. 78, SECTOR 6, FARIDIBAD**

Shri Yoginder Singh for the workman.

Shri R. C. Sharma, for, the respondent management.

AWARD

This reference No. 441 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/86-80/49775, dated 17th September, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri P. V. Padmanabhan, workman and the management of M/s Bermacco Fabricators (Valves Division), Plot No. 78, Sector 6, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri P. V. Padmanabhan was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference notices were issued to the parties and the parties appeared and filed their pleadings. According to the pleadings the case of the workman is that he was appointed on 8th October, 1978 as turner at a salary of Rs. 345/- per month and he was removed on 7th June, 1980 without giving any notice, chargesheet or enquiry. He was removed because he was the General Secretary of the union of the factory and he raised the demand for the workers of the factory. The order of termination is illegal and without jurisdiction and he has prayed for reinstatement with continuity of service and with full back wages.

The case of the respondent according to the written statement is that the workman was taken in the employment on 1st November, 1978 and a letter of appointment was issued to the workman. The claimant started to behave indifferently, damaged and spoiled the job so given to him for work and a letter of explanation was issued and he was warned,—*vide* letters 19th March, 1980, 15th May, 1980 and 8th May, 1980 and there was no change in the workman's behaviour. The respondent decided to terminate the services and on 7th June, 1980 a letter of termination was prepared which was given to the workman on 8th June, 1980 according to the terms and conditions of the appointment letter para No. 3. The respondent further stated that it is not a case of re-instatement or re-employment. Hence the reference is liable to be rejected. Moreover, the workman is gainfully employed and well placed in life, so the reference may be rejected. On the pleadings of the parties following issues were framed :—

1. Whether the termination of service of the workman is proper, justified and in order? If not, to what relief is he entitled?
2. Relief?

To prove this issue the respondent produced two oral witnesses MW-1 Shri M. P. Mandal, Manager of the company, and MW-2 Shri Satida Nand, supervisor of the respondent concern and produced documents from Ex. M-1 to M-11 and the workman came as his own as WW-1 and produced Ex. W-1 to Ex. W-4. The respondent's representative argued that it is a simple termination according to the terms and conditions of appointment letter Ex. M-11,—*vide* para No. 12 of the same. The respondent could remove the service of the workman by giving one month pay or one month notice before terminating the service and workman can also left the service with one month's notice. The workman was not behaving properly and there was complaint against him from the Incharge Supervisor that the workman is not working properly and spoiling the job which are Ex. M-5, M-3, M-2 and M-1, but in spite of these warning the workman did not change his behaviour and improve his work so the management decided to remove the service of the workman and ordered on 8th June, 1980,—*vide* Ex. M-9. The workman was removed from service on account of his misconduct misbehave and financial loss to the respondent. The respondent offered one month's pay and compensation,—*vide* Ex. M-10, but the same was refused by the workman to receive the same. The respondent management had rightly terminated the services of the workman of such a nature.

The representative of the workman argued that the termination order is bad in law because the workman was appointed on 8th October, 1978 as turner on a permanent job and he continued in the service upto 7th June, 1980 upto the day of termination. The workman was a trained turner and worked hard according to the satisfaction of the respondent upto February, 1980. In February, 1980 the workmen of the factory organised a union for their claims and the workman was elected as General Secretary of the union and the claimant raised certain demands of the workmen on the respondent. The respondent was annoyed on these demands and tried to removed the services of the workman in any way so they issued the letters to the workman of spoiling the job by the workman and sleeping on night duties and misbehaving. For which the workman replied which are Ex. M-6, M-4. In the month of March, 1980 the workman

was stopped at the gate for 20 days without any reason and after 20 days he was taken on duty. The workman demanded the salary for this period, so he was removed from the service without giving any reason and notice or holding any enquiry for his misconduct etc. The respondent started the enquiry against the workman, but the workman was not called to participate in the enquiry. The respondent better knows why the enquiry was not held against the workman. The workman was working with the respondent from 8th October, 1978 very smoothly and there was no complaint of his work and his behaviour. When he was working smoothly upto February, 1980 then how the workman started spoiling the job and misbehaving. This is all a made up story prepared by the respondent otherwise the workman was a permanent employee and completed 1½ years service without any break so his service can not be terminated under the law by simple termination letter. The respondent should have held the enquiry against the workman on the allegation of misconduct. If the workman had not participated in the enquiry, the enquiry officer of the respondent should have proceeded with the enquiry and *ex parte* report could be made against the workman which can be produced in this court. But the management had not mentioned anything about the enquiry in the written statement or in the statement of the respondent witness. In the cross-examination of MW-1 manager of the factory has admitted that the enquiry officer did not written any letter to the workman for this enquiry. At one place in his cross-examination the witness says that the workman did not turn up to participate in the enquiry. When the enquiry officer had not called the workman for enquiry proceedings how the workman could come to participate in the enquiry. The witness also denied about the workman's status as General Secretary of the union. Though he admits that there exist a union which came into the existence in the year 1981. The workman in his statement has put his case properly well and stated that he was not allowed for duties for 20 days and with the help of the Labour Officer he was again allowed to join duties. The workman has produced Ex. W-4, the copy the letter sent to the Labour-cum-Conciliation Officer, Faridabad who helped the workman in this matter. The workman has also produced a letter dated 23rd March, 1980 from the workman Ex. W-1 which was sent by the registered post. The representative of the workman argued that a permanent workman can not be terminated in the way in which the respondent had terminated the service of the workman under the law. He further argued that the respondent had adopted the model standing orders which they have to prove in this court which admitted by the witness MW-1 in his cross-examination under the Model Standing orders the services of the workman cannot be terminated in this way so the workman is entitled for his reinstatement with continuity of service and full back wages.

After hearing the arguments of the parties, and going through the file I am of the view that the termination order is unjustified and not proper according to law. If there was any allegation of misconduct on the workman the respondent should have held the enquiry to prove the guilt of the workman in the enquiry. After that they can remove the service of the workman. I agree with the argument put forward by the representative of the workman and hold that the workman is entitled for his reinstatement with continuity of service and full back wages. No order as to costs.

This may be read in answer to this reference.

Dated the 7th November, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endstt. No. 3223, dated the 19th November, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947 with the request that receipt of the award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.